

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS**

**NOTICE OF RULE WAIVER
PURSUANT TO EXECUTIVE ORDER NO. 103 (MURPHY)
COVID-19 STATE OF EMERGENCY**

DCA-W-2020-08

Temporary Rule Waiver adopted by Paul R. Rodríguez, Acting Director, Division of Consumer Affairs

Date: May 1, 2020

Authority: N.J.S.A. App.A:9-45; Executive Order No. 103 (Murphy) (“EO 103”)

Effective Date: May 1, 2020

Expiration Date: May 20, 2020, or the last day of the period during which the New Jersey Department of Environmental Protection exercises enforcement discretion regarding N.J.A.C. 7:27-25.3, whichever is later.

This is an emergency adoption of a temporary waiver of the ASTM fuel requirements under N.J.A.C. 13:47H-1.1. This temporary waiver extends for an additional period the temporary waiver of the ASTM fuel requirements adopted by the Division of Consumer Affairs on March 30, 2020 (“DCA Waiver No. W-2020-03”), which is scheduled to expire on May 1, 2020.

Section 6 of EO 103, issued in response to the COVID-19 pandemic, authorizes the Director of the Division of Consumer Affairs to waive, suspend, or modify rules, the enforcement of which would be detrimental to the public welfare. Additionally, pursuant to N.J.A.C. 13:45C-2.3(c), the Division of Consumer Affairs may waive or relax its regulatory requirements on its own initiative if the consequence of requiring strict compliance with the rules, or parts of the rules, in a particular instance, would lead to an unfair, burdensome or incongruous result, or would endanger the health, safety and welfare of the general public.

Pursuant to the authorities referenced in this waiver, the Office of Weights and Measures in the Division of Consumer Affairs hereby waives certain requirements under N.J.A.C. 13:47H-1.1. Specifically, N.J.A.C. 13:47H-1.1 provides that all engine fuels and automotive lubricants sold or offered for sale in New Jersey must comply with Uniform Engine Fuels and Automotive Lubricants Regulations contained in the National Institute of Standards and Technology (NIST) Handbook 130, 2020 edition, on page 191, adopted by the National Conference on Weights and Measures, as amended and supplemented. NIST Handbook 130, in turn, references and incorporates 1) the American Society for Testing and Materials International (ASTM) standards that establish vapor pressure and distillation class requirements for automotive fuel and 2) United States Environmental Protection Agency rules codified at 40 C.F.R. 80.27. These ASTM and EPA standards are seasonal and are adjusted through the year. Under these standards, winter fuel sold

in New Jersey is subject to maximum Reid Vapor Pressure (RVP) levels. Additionally, the ASTM standards establish the permissible variance in the RVP of automotive fuels sold during the transition between winter and summer automotive fuels.

The COVID-19 pandemic has resulted in reduced consumption of gasoline which, in turn, has resulted in a surplus of winter automotive fuel. As a result, automotive gasoline terminals report a large inventory of winter automotive fuel that they must sell prior to stocking the summer automotive fuel inventory that is arriving.

The New Jersey Department of Environmental Protection (“DEP”), which regulates RVP limits between May 1 and September 15 of each year in N.J.A.C. 7:27-25.3, has informed the public by letter dated March 30, 2020 (the “DEP March 30 Letter”) that DEP will exercise its enforcement discretion regarding the RVP limits in N.J.A.C. 7:27-25.3 until May 20, 2020, in order to ensure an adequate supply of gasoline and consistent with actions of the United States Environmental Protection Agency.

Therefore, in consideration that automotive gasoline terminals likely will not be able to diminish their supplies of winter automotive fuel by May 1, 2020, and to provide clarity to the public regarding applicability of Division regulations after May 1, 2020, pursuant to the above-cited authority, in consultation with the New Jersey DEP, with the approval of the Governor, and in consultation with the State Director of Emergency Management, I hereby waive N.J.A.C. 13:47H-1.1 to the extent necessary to permit all automotive gasoline sellers in the State to continue the sale of winter automotive fuel currently on hand and as delivered by suppliers. This waiver shall remain in effect until May 20, 2020, unless DEP extends the period of enforcement discretion announced in the DEP March 30 Letter, in which case the Division’s waiver shall be coterminous with DEP’s policy of enforcement discretion.

I find that this supplemental waiver of the rule above is necessary because enforcement of the existing requirements would be detrimental to the public welfare during this emergency.



Date: May 1, 2020

Paul R Rodríguez, Acting Director